

Rejections Under 35 U.S.C. § 112, Second Paragraph:

Claims 3-5 and 37-39 stand rejected under 35 U.S.C. § 112, second paragraph, the Examiner believing that the claims are indefinite for failing to particularly point out and distinctly claim the subject matter which Applicants regard as the invention. In particular, the Examiner believes that Claim 3 and therefor dependent claims 4, 5, and 37-39, are unclear in the recitation of "from SEQ ID NO: 5" and the phrase "of SEQ ID NO: 5" has been suggested. Applicants have canceled claim 3 therefor the rejection has been mooted and the Examiner is respectfully requested to reconsider and withdraw the rejection.

REJECTIONS UNDER 35 U.S.C. §102:

Claim 3 stands rejected under 35 U.S.C. 102(b) as being anticipated by Dolphin *et al.* (IDS reference AA; EMBL Accession Number Z47522, 12 January 1995). In particular, the Examiner believes that Dolphin teaches a polynucleotide that is 99.5% identical to the polynucleotide of SEQ ID NO: 5 of the present application with mismatches at nucleotides 129, 472, 717, and 1458 of SEQ ID NO: 5 and that Dolphin teaches that the polynucleotide sequence was isolated from the adult human liver and encodes a flavin-containing monooxygenase type 3 enzyme. The Examiner believes that these teachings anticipate claim 3 as written.

Applicants have canceled claim 3 without prejudice to continued prosecution of the subject matter of the claim in a related copending application. The present rejection has therefor been mooted and the Examiner is respectfully requested to reconsider and withdraw the present rejection.

Rejections under 35 USC §103:

Claim 5 stands rejected under 35 USC §103(a) as being unpatentable over Dolphin *et al.* in view of Sambrook (*Molecular Cloning, 2nd Edition*, 1989, Cold Spring Harbor Laboratory Press, 17.10-17.27). In particular, the Examiner believes that Dolphin *et al.* teaches the DNA sequence as described above, but does not teach an expression vector with a heterologous regulatory control sequence comprising the DNA of Dolphin in a prokaryotic or eukaryotic host cell. The Examiner believes that Sambrook teaches the expression vectors for prokaryotic or eukaryotic polypeptide expression and methods for inserting a DNA into the

vectors. Further, the Examiner believes that it would have been obvious to one of ordinary skill in the art to combine the disclosures of Dolphin and Sambrook to make an expression vector with a heterologous regulatory sequence comprising the DNA of Dolphin in a prokaryotic or eukaryotic host cell and that one would have a reasonable expectation of success for expression of the protein.

As above, Applicants have canceled claim 3 upon which claim 5 depended. Further, claims 4, 5 and 37-39 have been amended to overcome the rejections(s) under 35 U.S.C. § 112, set forth above and to include all of the limitations of the base claim and any intervening claim. This amendment is believed to overcome the rejection under 35 U.S.C. 103(a) and is consistent with the indication by the Examiner that claim 4 and 37-39 would be allowable if rewritten. Therefore Applicants believe that the rejection under 35 U.S.C. § 103(a) has been overcome and the Examiner is respectfully requested to reconsider and withdraw the present rejection.

CONCLUSION

In view of the foregoing, Applicants believe all objections to and rejections of the claims have been addressed and the claims as now pending in this Application are in condition for allowance and an action to that end is urged. If the Examiner believes a telephone conference would aid in the prosecution of this case in any way, please call the undersigned at 206-467-9600.

Respectfully submitted,

Dated: 22 August 2002

By: Brian W. Poor  
Brian W. Poor  
Reg. No. 32,928

TOWNSEND and TOWNSEND and CREW LLP  
Two Embarcadero Center, 8<sup>th</sup> Floor  
San Francisco, California 94111-3834  
Tel: (206) 467-9600  
Fax: (415) 576-0300

**VERSION WITH MARKINGS TO SHOW CHANGES MADE**

Please replace the paragraph beginning at page 1, line 15, as amended by the Request for Filing a Continuation Application dated May 30, 2000 with the following:

This application is a continuation of and claims the benefit of U.S. Patent Application No. 08/617,671, filed March 17, 1996, now abandoned, which is a continuation-in-part of U.S. Patent Application No. 08/023,843, filed February 26, 1993, now abandoned, the disclosures of which are incorporated herein by reference in their entirety.

**IN THE CLAIMS:**

Please amend the claims as set forth herein below. An Appendix showing all changes to the claims is attached to this amendment as required by 37 CFR § 1.12(b).

Please cancel claim 3 without prejudice to continued prosecution in a related copending application.

4. (Twice Amended) [The] An isolated DNA sequence encoding an adult human liver flavin-containing monooxygenase (FMOS) [of Claim 3], wherein the DNA sequence is as depicted as SEQ ID NO: 5

5. (Twice Amended) A procaryotic or eucaryotic host cell containing DNA sequences according to [Claim 3] claim 4 with a heterologous regulatory control sequence in an expression vector therefor.

37. (Amended) The DNA sequence of claim [3] 4, wherein the DNA sequence encodes the amino acid sequence of SEQ ID NO: 6.

38. (Amended) The DNA sequence of claim [3] 4, wherein the DNA sequence is SEQ ID NO: 7.

39. (Amended) The DNA sequence of claim [3] 4, wherein the DNA sequence encodes the amino acid sequence of SEQ ID NO: 8.